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SOAH DOCKET NO. 473-21-0538

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APPLICATION OF SOUTHWESTERN )	BEFORE THE PUBLIC UTILITY
ELECTRIC POWER COMPANY FOR )	COMMISSION OF TEXAS
AUTHORITY TO CHANGE RATES )	
)	REFERRED TO THE STATE OFFICE
)	OF ADMINISTRATIVE HEARINGS

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**SIERRA CLUB'S INITIAL BRIEF**

June 17, 2021

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**SIERRA CLUB’S INITIAL BRIEF**

**I. INTRODUCTION/SUMMARY [Preliminary Order (PO) Issues 4, 5, 6, 8, 10, 13, 15, 23, 24, 44, 45, 68, 69, 70, 71]**

Southwestern Electric Power Company (“SWEPCO” or the “Company”) has not learned its lesson. Just three years after charging customers \$700 million to install pollution controls at four coal-burning power plants<sup>1</sup>—three of which will retire early or convert to burning gas, forcing customers to pay millions in stranded costs<sup>2</sup>—SWEPCO has decided to continue spending further customer money on its remaining coal units without presenting the Commission with any economic justification and, in some cases, attempting to evade Commission oversight altogether. The Company does not dispute that it intends to spend another \$26.8 million on yet

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<sup>1</sup> *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at Finding of Fact (“FOF”) No. 19 (Mar. 19, 2018).

<sup>2</sup> Dolet Hills will to retire no later than December 2021 and Pirkey will retire by 2023. Under the current depreciation schedule, the Welsh units will retire in 2037 and 2042; but SWEPCO has stated that it will cease coal operation at Welsh in 2028 and is currently considering whether to convert the units to gas or to retire them outright. *See* Sierra Club Exhibit 1A (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021) (Section 5 Redacted) [hereinafter “Direct Testimony of Glick”]) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12; SWEPCO Ex. 7 (Direct Testimony of McMahon) at 7, Table 2.

another coal plant retrofit project at the Flint Creek power plant—this time, to comply with the U.S. Environmental Protection Agency’s (“EPA’s”) coal ash and wastewater regulations—that it has already invested millions of dollars in the retrofit, or that a substantial portion of those costs could be avoided by retiring the plant before 2028.<sup>3</sup> Nevertheless, the Company insists that its “decision to retrofit Flint Creek and any associated investment” are irrelevant until some future case after SWEPCO has already completed the project and it “requests to include such investment in its rate base.”<sup>4</sup> That decision and the other coal spending proposed in this case will likely harm Texas customers, who are already facing significant rate increases due, in part, to the accelerated depreciation of SWEPCO’s previous coal plant retrofits that are no longer used and useful.

In this proceeding in which SWEPCO is requesting an increase in base rates of 30.31% over adjusted Texas retail test year rate revenue,<sup>5</sup> the Commission must closely scrutinize every dollar of the Company’s proposed spending. To facilitate this objective, Sierra Club raises five claims to protect customers from SWEPCO’s wasteful spending.

First, the Commission should deny SWEPCO’s proposed test year spending at the Flint Creek and Welsh plants because the Company has not provided any empirical evidence

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<sup>3</sup> SWEPCO Ex. 1 (Rate Filing Package Schedules & Workpapers Volumes 1 through 11[hereinafter “Application”]) at 3439, Schedule H 5-3.b; Sierra Club Exhibit 1A (Direct Testimony of Glick) at 128 (exhibiting SWEPCO Response to Sierra Club Request 3-2) (“[A]n option is available in the rule to allow the plant to cease combustion of coal (i.e., retire or repower) and to continue to operate without further ELG-related retrofits until no later than December 31, 2028.”); *see also* SWEPCO’s Objection and Mot. to Strike the Testimony of Devi Glick on Behalf of Sierra Club at 3 (Apr. 9, 2021).

<sup>4</sup> SWEPCO’s Objection and Mot. to Strike at 3.

<sup>5</sup> SWEPCO Ex. 1 (Application) at 8, SWEPCO’s Petition and Statement of Intent to Change Rates.

supporting the continued investment of capital or operations and maintenance (“O&M”) expenses at these plants. Despite seeking approval for tens of millions of dollars at these two plants in this case, SWEPCO has not provided a unit disposition study, net present value calculation, or any comparable quantification purporting to show that customers would benefit from the retention of Flint Creek or Welsh.<sup>6</sup> The Commission should deny the test year spending for these plants on that basis alone. Sierra Club, on the other hand, has provided calculations that rely on SWEPCO’s own data projections, that show that these plants, when they operate at all, will do so as high-cost peaking units, and that customers would be better off if SWEPCO retired both Flint Creek and Welsh plants in the near term and replaced them with alternative resources. There is no record evidence that supports approval of the test year spending at Flint Creek or Welsh, and these expenses must be disallowed.

Second, the Commission should disallow the test year O&M and capital spending at the Dolet Hills plant. SWEPCO presented no evidence of its own to support the level of O&M and capital spending for Dolet Hills, and relied entirely on the justification provided by its co-owner, an entity that is not regulated by the Commission.<sup>7</sup> In doing so, SWEPCO failed to meet its burden of proof under Texas law, which requires a regulated utility to justify the expenses it seeks to charge to customers.<sup>8</sup> In addition, despite having advanced the end-of-life date for Dolet

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<sup>6</sup> See Sierra Club Exhibit 1A (Direct Testimony of Glick) at 042; *see also* Sierra Club Offer of Proof Ex. 1 (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021)) at 031-040; *see also id.* at 143 (exhibiting SWEPCO Response to Sierra Club Request 1-5, HS Attachment 6).

<sup>7</sup> SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18; Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); Tr. at 160:4 (McMahon Cross) (May 19, 2021) (“it’s the operator’s decision on how to deploy that funding”).

<sup>8</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. § 36.006 (amended 2019) (PURA).

Hills by two decades, SWEPCO has not re-evaluated and adjusted downward the level of spending at this plant. Customers should not be asked to pay costs that are not reasonable and necessary to operate this plant through its imminent retirement, a proposition that SWEPCO admits is “logical,”<sup>9</sup> but nevertheless failed to accomplish.

Third, the Commission should reject a return on the Dolet Hills unrecovered capital expenses that remain after the unit retires later this year. Applying the same principle that the Commission used for the unrecovered balance of Welsh unit 2,<sup>10</sup> the Commission should deny the “recovery on” the unrecovered balance of SWEPCO’s ill-conceived and no longer used and useful \$56.2 million environmental retrofits at Dolet Hills. As the Commission recognized with the early retirement of Welsh unit 2, allowing SWEPCO a recovery of, but *not* a return on, its capital investment in Dolet Hills,<sup>11</sup> balances the interests of shareholders and customers, given that the Dolet Hills retrofits will no longer be used and useful after December 2021—just two months after rates are scheduled to go into effect.

Fourth, to protect Texas customers from the creation of yet more stranded asset costs, the Commission should direct SWEPCO to seek a prudence determination for any decision to convert Welsh to burn gas prior to SWEPCO beginning construction. Over the last decade,

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<sup>9</sup> Tr. at 89:11-90:1 (Brice Cross) (May 19, 2021).

<sup>10</sup> *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FOF No. 68 (Mar. 19, 2018) (“Because Welsh unit 2 is no longer used and useful, SWEPCO may not include its investment associated with the plant in its rate base, and may not earn a return on that remaining investment.”); *id.* at FOF 69 (“Allowing SWEPCO a return of, but not on, its remaining investment in Welsh unit 2 balances the interests of ratepayers and shareholders with respect to a plant that no longer provides service.”).

<sup>11</sup> *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at FOF No. 69.

SWEPCO has made decisions to incur significant costs at its coal-burning units, often with scant contemporaneous documentation,<sup>12</sup> and then sought Commission approval for such decisions long afterwards. This practice has served Texas customers poorly, as the significant investment in the Dollet Hills and Pirkey power plants, followed by their rapid retirements, makes clear. To avoid a similar outcome for a Welsh gas conversion, the Commission should mandate a pre-approval, which SWEPCO could seek in a future rate case.

Fifth, while the Administrative Law Judges have found that SWEPCO's decision to retrofit Flint Creek to comply with EPA's coal ash and wastewater regulations—known as the Effluent Limitations Guidelines and Coal Combustions Residual rules ("ELG/CCR")—is not at issue in this case, the Commission should reverse that decision and hold that it was imprudent for the Company to incur these avoidable costs. The analysis that SWEPCO performed to justify this decision was flawed and, if corrected, would show that retiring Flint Creek by 2028 is the best option for customers. In the alternative, the Commission should at least make clear that SWEPCO is not permitted to charge any ELG/CCR costs in Texas rates until its ELG/CCR decision-making is addressed in a future proceeding.

In sum, and as further supported below, Sierra Club respectfully asks that the Commission determine the following:

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<sup>12</sup> See *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 44 (Sept. 22, 2017) ("In this case the ALJs find that the contemporaneous documentation is inadequate to show reasonable action by a utility manager[.]"). In its Order on Rehearing, at 3-5, the Commission reversed the ALJs on the ultimate conclusion of SWEPCO's prudence showing on the contemporaneous evidence standard, though it did not rely on any of SWEPCO's own contemporaneous documentation in reaching that holding. *Id.*

1. SWEPCO has failed to meet its burden for approval of test year O&M and capital maintenance costs for the Flint Creek and Welsh plants as the Company presented no empirical evidence demonstrating that customers benefit from the continued operation of these plants. Thus, the Commission should disallow the \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and the \$28.3 million of O&M and \$6.8 million in capital spending for Welsh include in the test year.
2. SWEPCO has failed to meet its burden for approval of O&M and capital maintenance costs for Dolet Hills as the Company has not re-evaluated the level of spending at this plant after advancing its retirement by decades and, as an independent legal ground, SWEPCO improperly relied exclusively on a non-regulated entity, the plant's co-owner, to support its proposed test year expenses. Accordingly, the Commission should disallow the approximately \$14 million in test year capital and O&M spending at Dolet Hills. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million, which represents the known and measurable reduction for the costs that SWEPCO will not incur as a result of its decision to retire Dolet Hills at the end of the peak demand season in 2021.
3. The Commission should disallow any return on the Company's capital investment in the Dolet Hills plant after it retires and is no longer "used and useful."
4. In Texas, rate cases are the sole forum by which the Commission regulates an electric utility's generation planning. The Commission should exercise this authority for the benefit of customers by ordering the Company to present a plan for the Welsh plant—retirement, conversion to gas, or replacement by alternative resources—in its next rate case.

5. The Commission should reverse the decision of the Administrative Law Judges and find that SWEPCO's decision to retrofit Flint Creek to incur the ELG/CCR costs was imprudent and unreasonable. In the alternative, the Commission should, at a minimum, declare that SWEPCO cannot charge any ELG/CCR costs to Texas customers until it seeks approval for the ELG/CCR decision-making in a future rate case.

**II. INVESTED CAPITAL - RATE BASE [PO Issues 4, 5, 6, 8, 10, 13, 15, 23, 24, 44, 45, 68, 69, 70, 71]**

**A. GENERATION, TRANSMISSION, AND DISTRIBUTION CAPITAL INVESTMENT [PO Issues 4, 5, 6, 8, 10, 13, 15, 23, 24, 44, 45, 68, 69, 70, 71]**

**i. The Commission Should Disallow the Proposed Test Year Spending at Flint Creek and Welsh Because SWEPCO Has Not Met Its Burden to Show That These Plants Benefit Customers.**

The Commission should exclude the proposed test year spending for both the Flint Creek and Welsh plants because SWEPCO has offered no economic analysis supporting the continued operation of, or continued capital or O&M investment in, these plants. Simply put, SWEPCO has not met its burden to show that maintaining these plants in service is in customers' interests.

Relying on the Company's own data, however, Sierra Club witness Glick shows that these plants have been historically, and are projected by the Company to remain for the next decade, high cost resources compared to alternatives. Even given the opportunity in its rebuttal, SWEPCO offered no empirical evidence to contradict that conclusion,<sup>13</sup> and failed to provide any analysis justifying its plan to continue operation of the Flint Creek and Welsh facilities for many years. The Commission should therefore deny all test year O&M and capital costs

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<sup>13</sup> See generally SWEPCO Ex. 47 (Rebuttal Testimony of Stegall) and SWEPCO Ex. 48 (Rebuttal Testimony of Becker).

associated with Flint Creek and Welsh, as the continued operation of these units is likely to harm Texas customers.

**a. The Company presented no reliable evidence to demonstrate the resource planning value of the Flint Creek and Welsh plants.**

The Company has the burden of proof that every dollar of its revenue requirement is reasonable and necessary.<sup>14</sup> In this case, the Company has proposed, as part of its test year spending, \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and \$28.3 million of O&M and \$6.8 million in capital spending for Welsh.<sup>15</sup> Despite the Commission's scrutiny of SWEPCO's generating resource planning in its last Texas rate case,<sup>16</sup> the Company inexplicably chose to offer no empirical evidence of the going-forward value of operating the Flint Creek and Welsh plants. On this basis alone—failure to meet its burden of proof with any credible evidence—the Commission should deny the proposed spending at Flint Creek and Welsh.

SWEPCO's application and direct testimonies do not address the economics of Flint Creek and Welsh. The Company performed no modeling, provided no unit disposition study, and submitted no quantified analysis purporting to demonstrate the value of continued retention of

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<sup>14</sup> PURA § 36.006(1).

<sup>15</sup> See SWEPCO Ex. 1 (Application) at 3406, 3408, Schedule H-1.2b; see also Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); see also *id.* at 012, Table 1.

<sup>16</sup> Docket No. 46449, Order on Rehearing at FOF No. 41 (Noting that given the complexity of the evolving regulatory environment, “a comprehensive approach to fleet management was required.”); *id.* at 2-5 (deciding Dolet Hills retrofit issues); see also *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 17 (Sept. 22, 2017) (“Whether SWEPCO’s decision to invest in retrofit technologies at Dolet Hills met the prudence standard was vigorously litigated in this docket.”); see *id.* at 68-72 (deciding OPUC and Sierra Club challenges to environmental capital spending at Flint Creek, Pirkey, and Welsh).

these plants.<sup>17</sup> Instead, witness Monte McMahon addressed the Company's management of costs at its existing units, stating his view that the Company's operations are reasonable.<sup>18</sup> The only data that Mr. McMahon presented related to Flint Creek and Welsh is a comparison of the forced outage rates for these plants between 2017 and 2018,<sup>19</sup> but this comparison does not show going forward value for these units and is no substitute for resource planning, it just means that the units broke down slightly less in one year as opposed to the next. If intended to demonstrate going forward value of these units, this is logical tautology akin to a person claiming to be a good driver because he crashed his car less this year than the year before. In any event, the Pirkey plant also had a lower forced outage rate in 2018 than it did in 2017,<sup>20</sup> but SWEPCO concedes that this plant does not have long-term value because the Company intends to retire it in 2023.<sup>21</sup> The Commission's standards of proof must be higher than that—the mere 'say so' of a Company witness, absent support from any data or empirical analysis justifying the going forward value of these plants cannot be sufficient to justify charging Texas customers millions of dollars per year.

Even after Sierra Club challenged the ongoing spending at these plants, the Company's rebuttal testimonies likewise do not support the continued operation of Flint Creek or Welsh. Two of SWEPCO's rebuttal witnesses address the Flint Creek or Welsh plants, but neither offers

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<sup>17</sup> See generally SWEPCO Ex. 1 and SWEPCO Ex. 7 (Direct Testimony of McMahon).

<sup>18</sup> SWEPCO Ex 7 (Direct Testimony of McMahon) at 38.

<sup>19</sup> *Id.*, Exhibit MAM-3 at 1.

<sup>20</sup> *Id.*, Exhibit MAM-3 at 3.

<sup>21</sup> See Sierra Club Ex. 1A (Direct Testimony of Glick) at 010 (noting SWEPCO's intention to retire Pirkey by 2023); TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12 (same).

analytical or quantitative support for the test year spending at these plants. First, company witness Becker describes the unit disposition studies that he performed in the Company's previous rate case to justify capital spending decisions made nearly a decade ago at Flint Creek and Welsh, in 2011, though he admits that the Company offered no comparable analysis in this case.<sup>22</sup> Second, company witness Stegall offered an analysis on the Company's energy market interactions for both Flint Creek and Welsh.<sup>23</sup> While Mr. Stegall's analysis might be relevant in a fuel prudence review proceeding where the Commission addresses the prudence of SPP energy market decisions, this analysis has little bearing on whether it is prudent for the Company to retain these units rather than retire them. On the stand, Mr. Stegall concurred that his analysis did not include fixed costs<sup>24</sup> and thus are plainly irrelevant to whether retaining these units is reasonable. Thus, none of the evidence offered in this case by SWEPCO supports the prudence and necessity of test year spending at Flint Creek and Welsh.

**b. The Flint Creek and Welsh plants are high cost compared to alternatives.**

Unlike the Company, Sierra Club, through the Direct Testimony of Devi Glick, submitted reliable evidence that addresses the overall value of the Flint Creek and Welsh plants. Based on the Company's own data, Ms. Glick balanced all of the costs, fixed and variable, of continuing to

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<sup>22</sup> Tr. at 693:16-694:7 (Becker Rebuttal) (May 21, 2021); SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 4-7; *see also* Docket No. 46449, Proposal for Decision at 53-55 (describing SWEPCO's 2011 decisions to incur air pollution compliance costs at Flint Creek and Welsh).

<sup>23</sup> SWEPCO Ex. 47 (Rebuttal Testimony of Stegall) at 5-6.

<sup>24</sup> Tr. at 676:14-18 (Stegall Rebuttal) (May 21, 2021) (Mr. Stegall agreeing that his calculations included energy revenues and variable costs only); *see also* SWEPCO Ex. 47 (Rebuttal Testimony of Stegall) at 5 (asserting that "Ms. Glick's calculations incorrectly include costs that are fixed").

operate these units against all the revenues they earn in the market.<sup>25</sup> Because SWEPCO does not receive capacity payments for its generation units, and to provide an apples-to-apples comparison, Ms. Glick credited the capacity value of the units at SWEPCO's capacity market forecast value, with a sensitivity at SPP's Cost of New Entry ("CONE"), which SWEPCO admits is a reasonable replacement cost assumption.<sup>26</sup> Ms. Glick's calculations demonstrate that Flint Creek and Welsh consistently cost customers more to operate than alternative resources. In fact, SWEPCO customers would be better off if the Company ceased operating both Flint Creek and Welsh, and instead purchase energy from the market to serve customer needs. In short, Ms. Glick's findings show, based on the Company's own data, that customers are likely to be harmed by the continued operation of Flint Creek and Welsh. As such, it no longer makes economic sense to continue investing in those plants. The Commission should therefore disallow of all the test year spending at Flint Creek and Welsh.

The recent, historical performance of the Flint Creek and Welsh plants has been poor. Capacity factors have been declining in recent years across all three units, with the plants' utilization dropping slightly in 2019 before plummeting in 2020.<sup>27</sup> Over the last six years, SWEPCO operated Flint Creek at an average capacity factor of 53 percent, and the Welsh units at an average capacity factor of 52 percent.<sup>28</sup> These are low capacity factors for plants with such high fixed costs.<sup>29</sup>

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<sup>25</sup> Sierra Club Ex. 1A (Direct Testimony of Glick) at 017-019.

<sup>26</sup> Tr. at 743:2-11 (Becker Rebuttal) (May 21, 2021).

<sup>27</sup> Sierra Club Ex. 1A (Direct Testimony of Glick) at 014.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

At Flint Creek, SWEPCO incurred net negative revenues compared to a market proxy for energy and capacity on a forward-looking basis in every year over the past six years (2015–2020), totaling \$153 million (2020\$).<sup>30</sup> This works out to an average of \$25 million in net losses relative to the market every year. Even excluding the \$114 million associated with the installation of flue-gas desulfurization, SWEPCO’s share of the unit incurred \$35 million (2020\$) in net negative revenues for an average of \$6 million in losses annually.<sup>31</sup> At the Welsh plant, SWEPCO incurred net negative revenues compared to a market proxy for energy and capacity on a forward-looking basis over the years 2015–2020 totaling \$144 million (2020\$).<sup>32</sup> This works out to an average of \$24 million in losses each year. Customers should not pay for such high-cost peaking power plants, when more affordable alternatives are available.<sup>33</sup>

Based on the Company’s own data, SWEPCO expects Flint Creek and Welsh to continue to perform poorly over the next decade. The Company is forecasting capacity factors that are even lower than those experienced during recent years, with neither plant projected to achieve a 30 percent annual capacity factor for any year for the rest of the decade.<sup>34</sup> Importantly, relying on the Company’s own projected data, Ms. Glick found that SWEPCO will incur net losses (total costs versus total value, including capacity value at SWEPCO’s projected capacity price) at Flint Creek of \$161 million (present value basis) over the next decade or an average of \$21 million per

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<sup>30</sup> *Id.* at 015.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 016.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 020-021.

year (2020\$).<sup>35</sup> Even crediting Flint Creek's capacity value at the wildly conservative capacity price assumption of CONE—essentially the cost of building a new gas plant—Flint Creek will have negative value for customers over the next decade, totaling \$27 million in present value or \$3.5 million annually (2020\$).<sup>36</sup> Similarly, relying on the Company's projected data, Ms. Glick found that Welsh units 1 and 3 are projected to incur net losses of \$266 million over the next decade (on a present value basis) or an average of \$35 million per year (2020\$).<sup>37</sup> Simply put, the only empirical data in the record that addresses the overall value of the Flint Creek and Welsh plants—the testimony of Ms. Glick that relies on SWEPCO's own projections—shows that continuing to operate these plants is an imprudent decision and that Texas customers will be harmed by their continued operation.

In response to Ms. Glick's economic analysis—which, again, is the only economic analysis of continuing to operate Flint Creek or Welsh in the record—SWEPCO witness Mark Becker offered essentially four qualitative critiques, none of which have merit. First, Mr. Becker criticized Ms. Glick's inclusion of fixed and capital costs in her forward-going economic analysis.<sup>38</sup> But Mr. Becker later admitted that the Company would include such costs in any unit

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<sup>35</sup> *Id.* at 022.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 024. Unlike Flint Creek, Welsh has marginally positive net value when capacity is credited at SPP's CONE calculation, but capacity should be available at much lower cost. *Id.*

<sup>38</sup> *See* SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 5.

disposition analysis evaluating the value of retrofitting or retiring a unit against replacement alternatives.<sup>39</sup>

Second, Mr. Becker took issue with Ms. Glick's assumption that all fixed and capital costs are expensed in the year that those costs are incurred, rather than depreciating those costs over the life of the unit.<sup>40</sup> Mr. Becker admitted, however, that any forward-going economic analysis is dependent on the assumed useful life of the plant, and that a plant generally cannot recover costs through market revenues after it has ceased operations.<sup>41</sup> Although SWEPCO assumes that Flint Creek and Welsh will operate until 2038, and 2042, respectively, Ms. Glick assumed only a ten-year useful life. But that reduced useful life is not unreasonable in light of SWEPCO's announcement that it would retire or convert Welsh to gas in 2028.<sup>42</sup> Moreover, in light of the declining economics at Flint Creek and coal generation generally,<sup>43</sup> there is little reason to believe that the plant will operate beyond 2030. In fact, five of SWEPCO's seven coal-burning electric generating units are now slated to retire or cease burning coal before their originally projected end of life, with each of those plants accelerating their retirement dates by a

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<sup>39</sup> Tr. at 689 (Becker Rebuttal) (May 21, 2021) ("Q And in these disposition analyses, you typically include all costs associated with the ongoing operation of a particular unit. Is that right? A That's correct, and those costs can be characterized as fixed and variable costs.").

<sup>40</sup> See SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 5.

<sup>41</sup> Tr. at 703-704, 705 (Becker Rebuttal) (May 21, 2021).

<sup>42</sup> See Sierra Club Exhibit 1A (Direct Testimony of Glick) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12

<sup>43</sup> TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 11 (showing decline in AEP's generation from 70% coal in 2005 to 44% in 2021 to a projected 22% in 2030).

decade or more.<sup>44</sup> In light of Mr. Becker’s admission that a power plant should generally earn enough revenue to cover all of its capital and fixed costs,<sup>45</sup> his acknowledgment that a power plant cannot earn revenue in the energy market once it ceases operation,<sup>46</sup> and the likelihood that both Flint Creek and Welsh will retire before the late 2030s or early 2040s (as the Company currently purports to assume), Ms. Glick’s analysis presents a reasonable forecast of the forward-going economics of those plants.

Third, Mr. Becker criticized Ms. Glick for evaluating only “one side” of the analysis,<sup>47</sup> and supposedly failing to account for the costs of replacing Flint Creek or Welsh. But as noted, Ms. Glick included in her analysis an assumption for capacity purchases and a sensitivity for the “cost of new entry” which is the cost of constructing a gas-fired unit, which SWEPCO admitted was a reasonable cost assumption.<sup>48</sup> Mr. Becker further admitted that Ms. Glick did include an energy generation alternative—replacing both Flint Creek and Welsh with energy market purchases.<sup>49</sup>

Finally, Mr. Becker faulted Ms. Glick for not including the cost of transmission upgrades that would be required to retire Flint Creek. As an initial matter, if Flint Creek is converted to gas

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<sup>44</sup> Sierra Club Exhibit 1A (Direct Testimony of Glick) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12; SWEPCO Ex. 7 (Direct Testimony of McMahon) at 7, Table 2.

<sup>45</sup> Tr. at 705:15-20 (Becker Rebuttal) (May 21, 2021).

<sup>46</sup> Tr. at 720:13-24 (Becker Rebuttal) (May 21, 2021).

<sup>47</sup> See SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 7.

<sup>48</sup> Tr. at 743:2-11 (Becker Rebuttal) (May 21, 2021).

<sup>49</sup> Tr. at 732:16-733:17 (Becker Rebuttal) (May 21, 2021).

instead of investing \$26.8 million to comply with EPA’s ELG/CCR rules, those transmission upgrades would not be required.<sup>50</sup> Moreover, SWEPCO admits that those transmission upgrades could be accomplished for approximately \$40 million,<sup>51</sup> far less than the \$161 million Flint Creek is projected to lose in the energy market over the next ten years.

In sum, Flint Creek and Welsh have cost far more than equivalent market services during recent years. Ms. Glick likewise shows, with SWEPCO’s own projected data, that during the next ten years, Flint Creek and Welsh will cost substantially more than the cost of alternative sources of energy and capacity. SWEPCO has the burden of demonstrating that its requested levels of test year O&M and ongoing capital spending at Flint Creek and Welsh are reasonable and necessary. The Commission should deny these costs on that basis alone. But Sierra Club, in contrast, *has* provided data showing that SWEPCO cannot economically justify operating Flint Creek or Welsh.

**ii. The Commission Should Adjust the Proposed Test Year Spending and Recovery at Dolet Hills.**

**a. SWEPCO has failed to demonstrate the prudence of its continued investments in the soon-to-be retired Dolet Hills power plant.**

The Public Utilities Regulatory Act requires the Commission to set just and reasonable retail rates, but a rate “cannot be deemed just and reasonable unless the utility was prudent in incurring the operating expenses it seeks to pass through to consumers.”<sup>52</sup> SWEPCO enjoys no

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<sup>50</sup> See SWEPCO Ex. 48 (Rebuttal Testimony of Becker) at 8 (stating the transmission upgrades are needed if Flint Creek “were to be retired”).

<sup>51</sup> Tr. at 735:13-15 (Becker Rebuttal) (May 21, 2021).

<sup>52</sup> *Gulf States Utilities Co. v. Pub. Util. Comm’n of Tex*, 841 S.W.2d 459, 465–66 (Tex. App. Austin 1992) (footnote omitted).

presumption of prudence by “simply opening its books to inspection.”<sup>53</sup> Rather, the utility bears the burden of demonstrating the prudence and reasonableness of “each dollar” of its expenditure.<sup>54</sup> To demonstrate that an expense was reasonable and necessary, SWEPCO generally must present “contemporaneous documentation of its decision-making process, thereby enabling the Commission”<sup>55</sup> to determine that the utility’s test year expenses are within a “range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available . . . .”<sup>56</sup>

Here, the Commission should disallow SWEPCO’s proposed test year spending at Dolet Hills for two fundamental reasons. First, SWEPCO failed to submit *any* evidence that would allow this Commission to independently assess the reasonableness of the Company’s test year capital or O&M investments at Dolet Hills. Although SWEPCO witness Monte McMahon provided testimony (ostensibly) supporting the prudence of the Company’s spending decisions at the Flint Creek, Pirkey, and Welsh power plants, SWEPCO’s application does not directly address the prudence of the Company’s approximately \$14 million test year capital and O&M expenses<sup>57</sup> at Dolet Hills because the co-owner, “CLECO is responsible for the operation and

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<sup>53</sup> *Entergy Gulf States, Inc. v. Pub. Util. Comm’n of Tex.*, 112 S.W.3d 208, 214 (Tex. App. Austin 2003).

<sup>54</sup> *Id.*; see also *Coalition of Cities for Affordable Util. Rates v. Pub. Util. Comm’n of Tex.*, 798 S.W.2d 560, 563 (Tex. 1990), *receded from on other grounds by Barr v. Resolution Trust Corp. ex rel. Sunbelt Federal Sav.*, 837 S.W.2d 627, 629 (Tex. 1992).

<sup>55</sup> *Gulf States*, 841 S.W. 2d at 476.

<sup>56</sup> *Entergy Gulf States, Inc. v. Pub. Util. Comm’n of Texas*, 112 S.W.3d 208, 210 (Tex. App. Austin 2003).

<sup>57</sup> SWEPCO Ex. 1 (Application) at 3410, Schedule H-1.2c; Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); see also *id.* at 012, Table 1.

maintenance of the plant.”<sup>58</sup> In fact, the record makes clear that SWEPCO does not actually “have a direct role” in any of the capital or O&M investment decisions at Dolet Hills.<sup>59</sup>

Instead of conducting its own evaluation of the prudence of its proposed test year spending at Dolet Hills, SWEPCO apparently deferred to the analyses and investment of the operator of the plant, Cleco Power. But under Texas law, *the regulated utility* bears the burden of demonstrating the prudence of its proposed capital and O&M expenses; and the Commission has a right and an obligation to Texas ratepayers to independently evaluate the prudence of those investments. SWEPCO neither cites, nor is Sierra Club aware of any precedent that would allow this Commission to simply defer to the investment decisions of a non-jurisdictional utility in another state. Because SWEPCO failed to submit any evidence supporting its test year spending at Dolet Hills, the Commission should disallow that investment.

Second, even if SWEPCO demonstrated that some of its test year spending at Dolet Hills was necessary (it did not), the Company unreasonably failed to evaluate opportunities for reducing its capital and O&M spending at the plant to reflect its shortened useful life. Indeed, a prudent utility would reduce spending to avoid expenses that are not necessary to maintain a unit through a reduced useful life. SWEPCO itself admitted that it would be “logical” to evaluate opportunities for reducing spending at Dolet Hills,<sup>60</sup> but the Company nevertheless failed to conduct any such evaluation. Instead, SWEPCO takes the position that it was not required to evaluate any reduction in spending because it is “not the operator” of the plant, and therefore “do[es] not have a direct role in determining what those expenditures would be for the remainder

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<sup>58</sup> SWEPCO Ex. 7 (Direct Testimony of McMahon) at 5:16-18.

<sup>59</sup> Tr. at 159:10-12 (McMahon Cross) (May 19, 2021).

<sup>60</sup> Tr. at 89:14-90:1 (Brice Cross) (May 19, 2021).

of the year.”<sup>61</sup> SWEPCO is wrong. Where, as here, a utility has accelerated the retirement of a generation resource because it is no longer economical to operate, the utility should likewise reduce capital and O&M spending to reflect its shortened useful life.<sup>62</sup>

In sum, the record demonstrates that SWEPCO wholly failed to support its continued capital and O&M investments at Dolet Hills. SWEPCO’s failure to submit any evidence in its direct case in support of its proposed test year spending at the plant reveals the Company’s apparent belief that this Commission would simply rubber-stamp its application or defer to the operational decisions of Dolet Hills’ co-owner, Cleco Power. The Commission should find that SWEPCO failed to satisfy its burden of demonstrating the prudence of its proposed test year spending at Dolet Hills. Moreover, the Commission should make clear that, once SWEPCO decided to accelerate the planned retirement of Dolet Hills from 2046 to 2021, the Company should have reduced capital and O&M spending at the plant to reflect its shortened useful life.

**b. The Commission should adjust the test year expenses for Dolet Hills to correspond to its scheduled retirement.**

Even if SWEPCO had demonstrated the prudence of some of its test year expenses at Dolet Hills, the Commission should adjust the utility’s test-year expenses to account for “known and measurable changes” to the utility’s operations.<sup>63</sup> Indeed, a utility’s test year expenses

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<sup>61</sup> Tr. at 159:10-12 (McMahon Cross) (May 19, 2021); *see also* Tr. at 84:22-25 (Brice Cross) (May 19, 2021) (“Cleco is the operator of the plant and would make those decisions.”); Tr. at 160:4 (McMahon Cross) (May 19, 2021) (“it’s the operator’s decision on how to deploy that funding”).

<sup>62</sup> *In re DTE Elec. Co.*, No. 349924, 2021 WL 743782, at \*4 (Mich. Ct. App. Feb. 25, 2021) (concluding that continued capital and O&M investment in a power plant that was no longer economic to operate was imprudent).

<sup>63</sup> *Id.*; *see also Central Power & Light/Cities of Alice v. Pub Util. Comm’n*, 36 S.W.3d 547, 563 (Tex.App.—Austin 2000, pet. denied) (“[T]he Commission’s authority to allow post-test-year adjustments for ‘known and measurable changes to historical test-year data’ is discretionary.”);

should not be “looked at in isolation or arbitrarily applied.”<sup>64</sup> Rather, the test year concept is “based on the assumption that” operations and expenses during the test year are “representative of” operations during the “time period in which the proposed rates will be in effect.”<sup>65</sup> Where, as here, “it is apparent the test year data provides an inaccurate forecast” of future operations or expenses, “adjustments should be made so as to provide a reasonably accurate estimate of future operating conditions” and expenses, thereby ensuring just and reasonable rates for customers.<sup>66</sup> In this case, SWEPCO seeks recovery of approximately \$14 million in test year capital and O&M expenses.<sup>67</sup> Although SWEPCO will permanently retire Dolet Hills no later than December 2021, just two months after the Company’s new base rates likely go into effect,<sup>68</sup> the

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16 Tex. Admin. Code § 25.231(b) (“In computing an electric utility’s allowable expenses, only the electric utility’s historical test year expenses as adjusted for known and measurable changes will be considered.”).

<sup>64</sup> *Central Louisiana Elec. Co. v. Louisiana Public Service Comm’n*, 508 So.2d 1361, 1369 (La. 1987); *see also City of Evansville v. Southern Indiana Gas & Elec. Co.*, 339 N.E.2d 562, 575 (Ind. App. 1975) (“The theory underlying the use of a test year in the rate-making process is that the data derived therefrom will be indicative of the future operating conditions to be in effect when the proposed rates are enacted. Accordingly, the historical test year rate base, expenses, and revenues are only helpful in the rate-making process where past operations are indicative of probable future operations.”).

<sup>65</sup> *Central Louisiana Elec. Co.*, 508 So.2d at 1369.

<sup>66</sup> *Id.*

<sup>67</sup> SWEPCO Ex. 1 (Application) at 3410, Schedule H-1.2c; Sierra Club Exhibit 1A (Direct Testimony of Glick) at 132-141 (exhibiting SWEPCO Response to CARD Request 1-16, Supplemental Attachment 2); *see also id.* at 012, Table 1.

<sup>68</sup> Tr. at 70:19-22; 131:18-22 (Brice Cross) (May 19, 2021). As a practical matter, Dolet Hills will be functionally retired at the end of the peak demand season, in September 2021. *See* Tr. at 177:16-21 (McMahon Cross) (May 19, 2021) (Dolet Hills is currently operating only seasonally, or “June through September”); *see also* Tr. at 100:3-5 (Brice Cross) (May 19, 2021). The Louisiana Public Service Commission has entered an order requiring Cleco Power, the co-owner of Dolet Hills, to operate the plant only seasonally from June through September. *In re: Application of Cleco Corporate Holdings LLC and Cleco Power LLC for: (i) Authorizations, Waivers, and Regulatory Interpretations of LPSC Order No. U-33434-A; (ii) Authorization for Cleco Corporate Holdings LLC to Pledge its Ownership Interest in Cleco*

Company's proposed rate increase fails to include any adjustment in the test year capital or O&M expenses to reflect the imminent retirement of the plant. By ignoring the retirement of Dolet Hills, SWEPCO's requested revenue requirement is unreasonably inflated since there will be no significant capital or O&M costs after the plant has been permanently retired in December 2021. In fact, because Cleco Power and SWEPCO have committed to operating Dolet Hills only in the peak demand season—June through September—the actual capital and O&M costs for the plant are likely to be significantly reduced by the time the Company's new base rates are effective.

The reduced utilization and ultimate retirement of Dolet Hills will result in known and measurable changes in the cost to maintain and operate the plant. SWEPCO failed to adjust test year expenses to reflect those operational changes, and therefore the Company's requested revenue requirement does not fairly or accurately reflect Dolet Hills operations for the period during which rates will be in effect. To ensure just and reasonable customer rates, SWEPCO's test year expenses for Dolet Hills should be adjusted to account for the imminent retirement of the plant. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million (25% of the proposed test year spending), which represents the known and measurable reduction for the three months—October, November, and December—during which SWEPCO has committed not to operate the plant.<sup>69</sup>

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*Power LLC; and (iii) Expedited Treatment*, Docket No. U-34794, 2019 WL 446985, Order at Commitment No. 59(v) (La.P.S.C. Jan. 31, 2019); *see also* CARD Ex. 11 (AEP 10Q For Quarterly Period Ending March 31, 2020) at 6 (“In January 2020, as part of the 2019 Arkansas Base Rate Case, management announced that the Dolet Hills Power Station was probable of abandonment and was to be retired by December 2026. In March 2020, management announced plans to accelerate the expected retirement date to the end of September 2021.”).

<sup>69</sup> Tr. at 176:1-6 (McMahon Cross) (May 19, 2021) (acknowledging that “[m]anagement . . . revised the useful life of Dolet Hills Power Station to September 2021”); Tr. at 135:24-136:10

**iii. The Commission Should Not Allow SWEPCO to Earn a “Return On” Any Dolet Hills’ Investment Costs That Are No Longer Used and Useful.**

In establishing an electric utility’s rates, the Commission “shall establish the utility’s overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility’s invested capital *used and useful in providing service to the public . . .*.”<sup>70</sup> Applying that principle, the Commission has recognized that regulated utilities may not earn a “return on” capital investments that are no longer used and useful.<sup>71</sup> In Docket No. 46449, for example, the Commission granted SWEPCO’s requested approval for the early retirement of Welsh unit 2 and allowed SWEPCO to recover the undepreciated plant balance for the unit, but did not allow SWEPCO to earn a return on undepreciated assets because, going forward, the plant was no longer going to be used and useful. The Commission reasoned, “[a]llowing SWEPCO a return of, but not on, its remaining investment in Welsh unit 2 balances the interests of ratepayers and shareholders with respect to a plant that no longer provides service.”<sup>72</sup>

The Commission should apply the same principle in this case, and deny SWEPCO’s request to earn a return on investments in Dolet Hills—which, as early as September 2021, but no later than December 2021—will no longer be used and useful.<sup>73</sup> In Docket No. 46449,

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(Baird Cross) (May 19, 2021) (Dolet Hills will be operated seasonally and cease to operate for the season in September 2021.).

<sup>70</sup> PURA § 36.051 (emphasis added).

<sup>71</sup> Docket No. 46449, Order on Rehearing at FOF No. 68.

<sup>72</sup> *Id.* at FOF No. 69.

<sup>73</sup> Although SWEPCO has represented that it will permanently retire Dolet Hills no later than December 31, 2021, *see* Tr. at 70:19-21, 99:18-22 (May 19, 2021), the record indicates that, as a practical matter, the plant will be permanently retired in September 2021. *See id.* at 100:3-5, 177:16-21 (Dolet Hills is currently operating only seasonally, or “June through September”).

SWEPCO sought Commission approval to recover from ratepayers approximately \$56.2 million in environmental retrofits at the Dolet Hills power plant to comply with EPA’s Mercury and Air Toxics Rule and the Cross State Air Pollution Rule. Despite the Company’s failure to conduct any contemporaneous economic analysis of the prudence of that investment decision, the Commission approved those costs based, in part, on the Company’s assertions that Dolet Hills would continue to be a “valuable and reliable generating resource,” would remain economic to operate until 2046, and that spending \$56.2 million to retrofit the lignite plant was in the “best interest of customers.”<sup>74</sup> Now, just three years later, the Company has committed to permanently retiring the plant,<sup>75</sup> forcing customers to pay for the accelerated depreciation of more than \$47 million in still-unrecovered pollution control costs for a plant that, as of the end of 2021, will no longer be used and useful.<sup>76</sup>

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Indeed, the Louisiana Public Service Commission has entered an order requiring Cleco Power, the co-owner of Dolet Hills, to operate the plant only seasonally from June through September. . *In re: Application of Cleco Corporate Holdings LLC and Cleco Power LLC for: (i) Authorizations, Waivers, and Regulatory Interpretations or Certain Provisions of LPSC Order No. U-33434-A; (ii) Authorization for Cleco Corporate Holdings LLC to Pledge its Ownership Interest in Cleco Power LLC; and (iii) Expedited Treatment*, Docket No. U-34794, 2019 WL 446985, Order at Commitment No. 59(v) (La.P.S.C. Jan. 31, 2019); *see also* CARD Ex. 11 (AEP 10Q For Quarterly Period Ending March 31, 2020) at 6 (“In January 2020, as part of the 2019 Arkansas Base Rate Case, management announced that the Dolet Hills Power Station was probable of abandonment and was to be retired by December 2026. In March 2020, management announced plans to accelerate the expected retirement date to the end of September 2021.”).

<sup>74</sup> *See Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Rebuttal Testimony of Paul W. Franklin at 14, 22 (May 19, 2017); *see also Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Rebuttal Testimony of Thomas P. Brice at 5, 11 (May 19, 2017); *see also Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Rebuttal Testimony of Kurt G. Strunk at 37-38 (May 19, 2017) (submitting a “retrospective” prudence analysis assuming that Dolet Hills would operate until 2046).

<sup>75</sup> Tr. at 70:19-21, 99:18-22 (Brice Cross) (May 19, 2021).

<sup>76</sup> SWEPCO’s share of the Mercury and Air Toxics Standards (“MATS”) and Cross-State Air Pollution Rule (“CSAPR”) retrofit costs at Dolet Hills was \$56.2 million and \$37 million at

Although the Commission approved SWEPCO's recovery of the environmental retrofit costs, the Commission should not allow the Company to collect a "return on" those ill-conceived (and soon-to-be unused) retrofit investments. Doing so would serve only to further encourage risky and potentially unnecessary investments in marginally economical assets. To balance the utility shareholders' interests in the recovery of their investment with ratepayers' interests in avoiding unnecessary costs for assets that are no longer used and useful, the Commission should allow "recovery of" the Dolet Hills retrofit investment, but disallow "recovery on" the investment.

**iv. The Commission Should Supervise SWEPCO's Resource Planning Decisions at Welsh.**

**a. More rigorous Commission review of SWEPCO's resource planning is warranted because of recent decisions that have resulted in stranded assets.**

The Commission has broad authority to regulate the business of an electric utility.<sup>77</sup> Moreover, in establishing just and reasonable rates, the Commission also has broad discretion to consider all costs and investments that arise out of the same facts or utility decisions at issue in the case.<sup>78</sup> Related issues may be addressed in a rate case if they "involve common questions of

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Pirkey. *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket 46449, Direct Testimony of Venita McCellon-Allen at 26, 30 (Dec. 16, 2016).

<sup>77</sup> PURA § 14.001; *see also Reliant Energy, Inc. v. Pub. Util. Comm'n of Tex.*, 153 S.W.3d 174, 193 (Tex. App. 2004) (Section 16(a) does state the PUC's power "to do all things, whether specifically designated by this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction . . . this Court has recognized that the Commission has the power to control its own docket"), citing *City of El Paso v. Pub. Util. Comm'n*, 839 S.W.2d 895, 926 (Tex. App. Austin 1992), *rev'd in part on other grounds*, 883 S.W.2d 179 (Tex. 1994).

<sup>78</sup> *Coalition of Cities for Affordable Utility Rates*, 798 S.W.2d at 565.

law or fact and consolidation would be more time and cost efficient.”<sup>79</sup> Applying those principles, the Commission and courts have held a utility to higher standards of proof where contemporaneous evidence of power plant decision-making is lacking.<sup>80</sup> Here, SWEPCO’s recent history of undertaking costly environmental retrofits and then retiring units soon after suggests that a more rigorous review of SWEPCO’s resource planning is warranted. Just three years ago, SWEPCO obtained Commission approval to charge customers approximately \$700 million to install pollution controls on five coal-burning plants—four of which will retire early or convert to gas—forcing customers to pay for nearly \$100 million for retrofits that will be stranded before the end of their useful lives.<sup>81</sup> Given that history and the risk that SWEPCO customers will be stuck with additional, avoidable costs, the Commission can, and should, exercise its authority to review the Company’s resource planning and retrofit decisions now, before the costs are incurred and while adverse impacts to rates can be almost completely avoided.

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<sup>79</sup> 16 Tex. Admin. Code § 22.34(a) (2004); *see also Reliant Energy*, 153 S.W.3d at 194.

<sup>80</sup> *See Texas Indus. Energy Consumers v. Pub. Util. Comm’n of Texas*, 608 S.W.3d 817, 820-824 (Tex. App. 2018) (In a case involving the prudence of construction of SWEPCO’s Turk coal-burning plant, a panel of administrative law judges found that SWEPCO failed to monitor the economic feasibility of the plant during the construction and that the Company should have stopped construction. Further evidence showed that canceling the project mid-construction would have saved customers money. And the “Commission agreed that SWEPCO had no processes to monitor the changing economics of the project and, consequently, was unable to present ‘contemporaneous evidence to support its decision-making process’ regarding continued construction of the Turk Plant.”), *rev’d and remanded*, *Pub. Util. Comm’n of Tex. v. Tex. Indus. Energy Consumers*, 620 S.W.3d 418, 422 (Tex. 2021) (reversed on other grounds).

<sup>81</sup> SWEPCO’s share of the MATS and CSAPR retrofit costs at Dolet Hills was \$56.2 million and \$37 million at Pirkey. Docket No. 46449, Direct Testimony of Venita McCellon-Allen at 26, 30; *see also* Sierra Club Exhibit 1A (Direct Testimony of Glick) at 010; TIEC Ex. 6 (SWEPCO Response to TIEC 1-32 – Guggenheim Roadshow Presentation March 30, 2021) at 12.

**b. The Commission should require SWEPCO to seek a prudence determination for a decision to convert Welsh to gas before construction begins.**

In light of SWEPCO's recent poor resource planning decisions and to protect customers from incurring further stranded costs, and in part because SWEPCO has at times submitted scant evidence of its contemporaneous decision-making,<sup>82</sup> the Commission should require SWEPCO to seek a prudence determination for a decision to convert Welsh to gas and generally a plan for retiring or replacing the Welsh plant before the Company begins construction on any such project. In such a proceeding, the Company should provide analysis that evaluates and compares the cost of converting the plant to operate on gas versus retiring the plant and investing in alternatives for providing electric service to its customers. The Commission should require such an analysis as part of SWEPCO's next rate case, or at least in a proceeding prior to any potential construction if the Company decides to convert the plant to operate on gas. The Commission should exercise this authority for the benefit of customers by ordering the Company to present a plan for the Welsh plant—retirement, conversion to gas, or replacement by alternative resources—in its next rate case.

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<sup>82</sup> See *Application of SWEPCO for Authority to Change Rates*, Docket No. 46449, Proposal for Decision at 44 (Sept. 22, 2017) (“In this case the ALJs find that the contemporaneous documentation is inadequate to show reasonable action by a utility manager[.]”). In its Order on Rehearing, at 3-5, the Commission reversed the ALJs on the ultimate conclusion of SWEPCO's prudence showing on the contemporaneous evidence standard, though it did not rely on any of SWEPCO's own contemporaneous documentation in reaching that holding. *Id.*

**v. The Decision to Incur Avoidable Coal Combustion Residuals Rule and Effluent Limitations Guidelines Costs at Flint Creek, Rather Than Retire the Plant By 2028, Was Imprudent.**

Although the Administrative Law Judges have determined that ELG/CCR spending and costs were not at issue in this case, the Commission should reverse that finding and address the prudence of this decision. The Company is preparing, and in fact has already begun, investing tens of millions more in Flint Creek, despite the fact that the unit operated less than 40% of the time in 2020 and the Company is projecting that it will operate far less than 30% of the time through the 2030s.<sup>83</sup> SWEPCO has decided to go forward with incurring these costs at Flint Creek, which could be avoided if the plant retired by 2028. As Sierra Club's evidence would have shown in the excluded portions of Ms. Glick's testimony and in an Offer of Proof,<sup>84</sup> SWEPCO's decision is likely to harm customers and saddle them with paying back the costs of stranded assets in the future. In the alternative, at a minimum, the Commission should clearly state a finding that there are no ELG/CCR costs at issue in this case, that the Commission has not approved any such costs, and that no ELG or CCR costs may be included in Texas rates at this time.

SWEPCO's decision to incur avoidable ELG/CCR costs at Flint Creek, rather than retire the plant in 2028, is imprudent. SWEPCO has not disputed that it has decided to retrofit Flint Creek, already incurred substantial expenses, and will complete the project by 2023, thereby committing its customers to tens of millions of dollars in retrofit costs. EPA's ELG and CCR

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<sup>83</sup> Sierra Club Ex. 1A (Direct Testimony of Glick) at 020.

<sup>84</sup> Sierra Club Offer of Proof Ex. 1 (Unredacted Highly Sensitive Direct Testimony and Exhibits of Devi Glick (under seal) (filed with PUCT March 31, 2021)) at Section 5; Tr. at 604-606 (Offers of Proof By Sierra Club and Southwestern Electric Power Company) (May 20, 2021).

rules contain compliance exemptions for power plants that cease burning coal by 2028.<sup>85</sup> Thus, a substantial portion of these retrofit costs could be avoided by retiring or converting the plant to gas before EPA's 2028 compliance deadline. In fact, if the Company ceases burning coal at Flint Creek by 2028, it could avoid incurring approximately \$17 million of these retrofit costs.

The analysis that SWEPCO performed to justify investing the CCR/ELG retrofit costs at Flint Creek, as opposed to ceasing to burn coal at the plant prior to the compliance deadline, was flawed.<sup>86</sup> The analysis relied on a simplified and inaccurate modeling methodology that did not evaluate an optimized resource mix, and used overly conservative solar operational assumptions.<sup>87</sup> The analysis also omitted consideration of less costly alternatives to retrofitting and operating the plant, including (as noted above) retiring or converting the plant to burn gas before EPA's 2028 CCR/ELG compliance deadline, which could save ratepayers millions.<sup>88</sup>

Based on SWEPCO's own projections, as explained above, continuing to operate Flint Creek through 2030 will cost customers \$161 million more than the estimated market value of the energy and capacity provided by the resource.<sup>89</sup> Based on a comparison of prevailing energy market prices and SWEPCO's own production and capital cost projections, Flint Creek will lose money every year for the next decade even if the capacity of the plant were valued at the SPP

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<sup>85</sup> U.S. EPA, Steam Electric Reconsideration Rule, 85 Fed. Reg. 64,650, 64,661, 64,680 (Oct. 13, 2020); 40 CFR § 257.103(f); Sierra Club Ex. 1A (Direct Testimony of Glick) at 127-128, (exhibiting SWEPCO Response to Sierra Club Request 3-2(d)-(e)).

<sup>86</sup> Sierra Club Ex. 1, Direct Testimony of Devi Glick, Section 5; Tr. at 604-606 (Offers of Proof By Sierra Club and Southwestern Electric Power Company) (May 20, 2021).

<sup>87</sup> Sierra Club Ex. 1A (Direct Testimony of Glick) at 5-6.

<sup>88</sup> See generally *id.* at 029-040.

<sup>89</sup> Sierra Club Ex. 1A (Direct Testimony of Glick) at 015.

Cost of New Entry, a very conservative and unjustified assumption.<sup>90</sup> In sum, SWEPCO's decision to sink even more capital into this aging coal-burning unit is likely to harm customers. In the alternative, at a minimum, the Commission should make clear in this case that the Company cannot recover any ELG/CCR costs in Texas rates. SWEPCO witnesses have testified that there are no ELG or CCR costs related to Flint Creek in the test year spending the rate request at issue.<sup>91</sup> Since the Company has stated that no CCR or ELG costs are at issue in this case and the Commission has not ruled on the prudence of any such costs, the Commission should clearly state a finding that any such ELG/CCR costs cannot be charged to Texas customers at this time.

#### **IV. EXPENSES [PO Issues 4, 5, 6, 8, 10, 13, 15, 23, 24, 44, 45]**

##### **B. GENERATION O&M EXPENSE.**

Sierra Club briefed issues related to Dolet Hills, Flint Creek, Pirkey, and Welsh O&M expenses under the generation capital investment heading above. *See* Section II.A. Sierra Club's factual and legal assertions in Section II.A apply equally to the test year O&M expenses for these plants, as they do for the test year capital spending. Sierra Club asserts all the points raised in Section II.A here by reference.

#### **XI. CONCLUSION**

For the reasons stated herein, Sierra Club respectfully requests that the Commission make the following determinations:

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<sup>90</sup> *Id.* at 013.

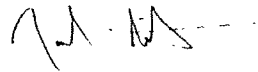
<sup>91</sup> Tr. at 84:2-85:8 (Brice Cross) (May 19, 2021); Tr. at 157:2-153:10 (McMahon Cross) (May 19, 2021).

1. SWEPCO has failed to meet its burden for approval of test year O&M and capital maintenance costs for the Flint Creek and Welsh plants as the Company presented no empirical evidence demonstrating that customers benefit from the continued operation of these plants. Thus, the Commission should disallow the \$9.8 million of O&M and \$3.4 million in capital spending proposed for Flint Creek, and the \$28.3 million of O&M and \$6.8 million in capital spending for Welsh included in the test year.
2. SWEPCO has failed to meet its burden for approval of O&M and capital maintenance costs for Dolet Hills as the Company has not re-evaluated the level of spending at this plant after advancing its retirement by decades and, as an independent legal ground, SWEPCO improperly relied exclusively on a non-regulated entity, the plant's co-owner, to support its proposed test year expenses. Accordingly, the Commission should disallow the approximately \$14 million in test year capital and O&M spending at Dolet Hills. At a minimum, the Company's test year expenses for Dolet Hills should be reduced by \$3.5 million, which represents the known and measurable reduction for the costs that SWEPCO will not incur as a result of its decision to retire Dolet Hills at the end of the peak demand season in 2021.
3. The Commission should disallow any return on the Company's capital investment in the Dolet Hills plant after it retires and is no longer "used and useful."
4. In Texas, rate cases are the sole forum by which the Commission regulates an electric utility's generation planning. The Commission should exercise this authority for the benefit of customers by ordering the Company to present a plan for the Welsh plant—retirement, conversion to gas, or replacement by alternative resources—in its next rate case.

5. The Commission should reverse the decision of the Administrative Law Judges and find that SWEPCO's decision to retrofit Flint Creek to incur the ELG/CCR costs was imprudent and unreasonable. In the alternative, the Commission should, at a minimum, declare that SWEPCO cannot charge any ELG/CCR costs to Texas customers until it seeks approval for the ELG/CCR decision-making in a future rate case.

Dated this 17th day of June, 2021.

Respectfully submitted,



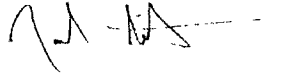
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*Counsel for Sierra Club*

### **CERTIFICATE OF SERVICE**

I, Joshua Smith, certify that a copy of the foregoing Sierra Club submission was served upon all parties of record in this proceeding on June 17, 2021, by electronic mail, as permitted by the presiding officer.

A handwritten signature in black ink, appearing to read 'Joshua Smith', is positioned above a horizontal line.

Joshua Smith  
Sierra Club Environmental Law Program